

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

ALLICE ALLEN, ET AL.

PLAINTIFFS

VS.

CIVIL ACTION NO. 3:06CV1-WHB-AGN

TOYOTA MOTOR CREDIT CORPORATION, ET AL.

DEFENDANTS

OPINION AND ORDER

This cause is before the Court on the Motion to Dismiss of Defendant Pat Peck Toyota AMC, Inc. and Defendant Carl, Inc.¹ Having considered the Motion, to which Plaintiffs failed to Respond, the Court finds that it is well taken and should be granted.

Through the subject Motion, Defendants argue, *inter alia*, that they should be dismissed under Rule 12(b)(5) of the Federal Rules of Civil Procedure for insufficiency of service of process. The Motion was filed on April 18, 2005. Plaintiffs have not filed a response to the Motion, and the time limit for filing a response has long-since expired. Therefore, pursuant to the authority granted this Court under Rule 7.2(c)(2) of the Uniform Local Rules of the United States District Courts for the Northern and Southern

¹This Motion was filed when the subject cause was on the docket of the United States District Court for the Northern District of Mississippi, under cause no. 4:04CV266-P-B. The Motion was filed under docket entry no. 16 of that cause number. After the Motion was filed, the case was transferred to this Court. The transfer was effective January 3, 2006.

Districts of Mississippi,² the Court finds that Defendants' Motion to Dismiss is well taken and should be granted. Because dismissal for insufficiency of service of process is not a decision on the merits, Defendant Pat Peck Toyota AMC, Inc. and Defendant Carl, Inc. must be dismissed without prejudice.

Based on the holdings presented above:

IT IS THEREFORE ORDERED that the Motion of Defendant Pat Peck Toyota AMC, Inc. and Defendant Carl, Inc. is hereby granted. Defendant Pat Peck Toyota AMC, Inc. and Defendant Carl, Inc. are hereby dismissed from this case without prejudice.

SO ORDERED this the 25th day of January, 2006.

s/ William H. Barbour, Jr.
UNITED STATES DISTRICT JUDGE

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²Rule 7.2(c)(2) states "[i]f a party fails to respond to any motion, other than a motion for summary judgment, within the time allotted, the court may grant the motion as unopposed."